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Amendment and/or Reply  
Accompanying RCE

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### **1. REMARKS / DISCUSSION OF ISSUES**

Claims 1-24 are pending in the application. Claims 1, 7, 13, 15 and 21 are in independent form. Because no claims have been amended, the most recently provided listing of claims is to be considered.

Unless indicated otherwise, claims are amended for non-statutory reasons: to correct one or more informalities, remove figure label number(s), and/or to replace European-style claim phraseology with American-style claim language.

#### **Objections to the Specification and Claims**

The specification and claim 14 have been objected to based on issues surrounding certain variables and matrix representations. Applicants have reviewed the objections and again respectfully submit that these objections are improper. Notably, Applicants respectfully submit that one of ordinary skill in the art of DS-CDMA having the opportunity to review the filed application and, in particular, the mathematical treatment set forth in the filed application at page 7, line 13-page 12, line 5 would readily understand the treatment and the role of each variable/matrix presently objected to by the Office Action. Accordingly, Applicants respectfully submit that these objections are improper and should be withdrawn.

#### **Drawings**

The objections to the drawings has been noted. The undersigned will raise this issue to assignee's counsel so that formal drawings can be obtained and filed.

#### **Rejection under 35 U.S.C. § 103(a)**

1. Claims 1, 4-7, 10-13, 15 and 18-24 were rejected under 35 U.S.C. § 103(a) in view of Lee (US 5,414,699). For at least the reasons set forth below, Applicants respectfully submit that this rejection is improper and should be withdrawn.

A proper rejection under 35 U.S.C. § 103(a) requires that all of the claimed

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elements be found in the applied art. If a **single** claimed element is not found in the applied art, a prima facie case of obviousness cannot be properly established.

Furthermore, obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is a teaching, suggestion or motivation to do so found in the references themselves or in the knowledge generally available to one of ordinary skill in the art. *In re Fine* 5 USPQ 2d 1596 (1988). However, hindsight is never an appropriate motivation for combining references and/or the requisite knowledge available to one having ordinary skill in the art. To this end, relying upon hindsight knowledge of applicants' disclosure when the prior art does not teach nor suggest such knowledge results in the use of the invention as a template for its own reconstruction. This is wholly improper in the determination of patentability. *Sensonics Inc. v Aerosonics Corp.*, 38 USPQ 2d 1551-1554 (1996), citing *W.L. Gore & Associates, Inc. v. Garlock, Inc.* 220 USPQ 303.

The Office Action equates the disclosure of 'training sequences' as disclosed in Lee with the featured pilot sequence of claims 1, 7, 13, 15 and 21. The Office Action asserts that these are one and the same as they perform the same function. Applicants respectfully disagree.

As featured, the pilot sequence is generated for synchronizing communication between a base and mobile users. By contrast, the reference to Lee does not disclose the use of training sequences for synchronization. In fact, the reference discloses a transmitter synchronization sequence 33 that follows the redundant training sequence 31. The synchronization sequence 33 is used to synchronize receiver and transmitter bit timing. (Kindly refer to column 4, lines 28-53 of Lee for support for the above assertions.)

Therefore, Applicants respectfully submit that the attempt to equate the training sequence of Lee with the pilot sequence of the claims under examination is unfounded. As such, Applicants respectfully submit that the reference to Lee lacks at least the disclosure of one feature of the independent claims.

In addition, Applicants respectfully submit that the assertion by the Examiner

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that the DS CDMA inherently uses a single channel is improper. To this end, inherency may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient. Accordingly, the Examiner's unsupported assertion of inherency is improper and it is respectfully submitted that sufficient evidence in support of the assertions of inherency has not been provided. If the assertions of inherency set forth in the Office Action are based on personal knowledge of the Examiner, an affidavit under 37 CFR § 1.104(d)(2) is respectfully requested. Otherwise, some other form of extrinsic evidence in support of this assertion is respectfully requested. If evidence in support of the assertion of inherency are not provided it is respectfully submitted that the rejections based on inherency be withdrawn.

2. Claims 2-3, 8-9 and 16-17 were rejected under 35 U.S.C. § 103(a) in view of *Lee* and *Caire, et al.* While in no way conceding to the propriety of this rejection, Applicants respectfully submit that these claims depend directly or indirectly from one of the independent claims, which are patentable for at least the reasons set forth above. As such, these claims are patentable at least for the reasons set forth above. Furthermore, Applicants reserve the right to proffer arguments regarding the subject matter of these claims in future communications regarding this application or any continuing application thereof.

### Conclusion

In view of the foregoing, applicant(s) respectfully request(s) that the Examiner withdraw the objection(s) and/or rejection(s) of record, allow all the pending claims, and find the application in condition for allowance. If any points remain in issue that may best be resolved through a personal or telephonic interview, the Examiner is respectfully requested to contact the undersigned at the telephone number listed below.

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If necessary, the Commissioner is hereby authorized in this, concurrent, and further replies to charge payment or credit any overpayment to Deposit Account Number 50-0238 for any additional fees, including, but not limited to, the fees under 37 C.F.R. §1.16 or under 37 C.F.R. §1.17.

Respectfully submitted,



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